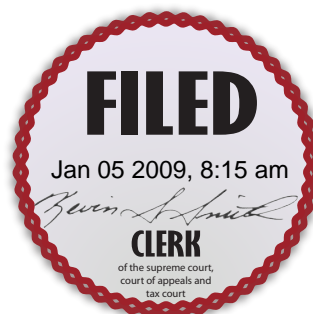


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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TENEE WEBSTER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0804-CR-381

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Grant W. Hawkins, Judge  
Cause No. 49G05-0709-FC-180902

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**January 5, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Following a jury trial, Tenee Webster was convicted of Battery<sup>1</sup> as a class C felony. The trial court subsequently sentenced Webster to five years, with two years executed and three years suspended to probation. Webster was given sixteen days credit for pre-trial confinement. On appeal, Webster presents three issues for our review:

1. Did the trial court abuse its discretion in sentencing Webster?
2. Is Webster's sentence inappropriate?
3. Did the trial court err in refusing to give Webster credit for time spent on pre-trial GPS monitoring?

We affirm and remand.

During the evening hours of August 31, 2007, Sherrdona Radford rode her bicycle to a variety store parking lot near Bethel Avenue and Calvin Street in Indianapolis where she talked with friends and relatives. As Radford left the parking lot, she observed a black Monte Carlo with two people inside who Radford recognized as Webster and Nikki Wright. Radford was acquainted with Webster because Webster had previously dated Radford's cousin.

Radford exited the parking lot on her bicycle and headed down Bethel Avenue toward Calvin Street to meet up with a friend. As Radford rode down Bethel Avenue, Webster attempted to hit Radford with her vehicle. Radford avoided being hit by swerving her bike onto the side of the road. When Radford realized that her friend was no longer waiting for her on Calvin Street, Radford turned around and continued down Bethel Avenue toward her

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<sup>1</sup> Ind. Code Ann. § 35-42-2-1 (West, Premise through 2008 2nd Regular Sess.).

home. Radford turned left on Zwingley Street, and as she approached the intersection of Zwingley and Minnesota Street she noticed Webster's vehicle sitting at the corner. Radford stopped at the intersection when she heard Webster and Wright yelling and calling her names. Radford asked them "what was their problem, what was going on[?]", as she got off of her bicycle. Webster then exited the vehicle with a .25 caliber semi-automatic handgun and ran toward Radford. *Transcript* at 31. Webster shot Radford in the lower left side of her abdomen.<sup>2</sup> Webster went back to her car and then returned to Radford as she lay in the street. Webster threatened to shoot Radford in the head, but left the scene as others approached.

When Officer Kelly Novak of the Indianapolis Metropolitan Police Department (IMPD) arrived at the scene, a large crowd of people had already gathered. When she spoke with Radford, Radford immediately identified Webster as the person who shot her and provided Officer Novak with a description of Webster's car. Detective Gregory Scheid of the IMPD received a dispatch around 10:30 p.m. regarding the shooting and went to Methodist Hospital where he interviewed Radford. Radford again identified Webster as the person who shot her. At approximately 11:13 p.m., Detective Scheid received a dispatch that Webster called to turn herself in. In her statement to police, Webster claimed she shot Radford in self-defense. Webster stated that Radford came up next to her vehicle and was "screaming and hollering" and that she reached for her gun and shot at Radford when Radford "reached down in her purse" *Exhibits* at 29. Webster initially claimed that she fired her weapon from inside her car, but later admitted that she was in front of her vehicle when

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<sup>2</sup> As a result of the shooting, Radford suffered damage to the muscle tissue in her left side, she cannot have

she shot Radford. Radford testified that she did not have a weapon, and Webster admitted she never saw a gun.

On September 4, 2007, the State charged Webster with battery as a class C felony. A jury trial was held on March 18, 2008, at the conclusion of which Webster was found guilty as charged. On March 26, 2008, the trial court sentenced Webster to five years imprisonment with two years executed and three years suspended to probation. Webster received credit for sixteen days of pre-trial confinement. The trial court identified as mitigating factors Webster's medical problems and the hardship imposed on her five-year-old son. The trial court considered Webster's criminal history to be aggravating, specifically noting a prior conviction for carrying a handgun without a license.

1.

Webster first argues that the trial court abused its discretion in sentencing her. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. A trial court may impose any sentence authorized by statute and permissible under the Indiana Constitution regardless of the presence or absence of aggravating or mitigating circumstances. *Id.* Thus, in *Anglemyer*, our Supreme Court held:

Because the trial court no longer has any obligation to “weigh” aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, a trial court can not now be said to have abused its discretion in failing to “properly weigh” such factors.

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children, and she sees a doctor weekly.

*Anglemyer v. State*, 868 N.E.2d at 491. Circumstances under which a trial court may be found to have abused its discretion include: (1) failing to enter a sentencing statement, (2) entering a sentencing statement that includes reasons not supported by the record, (3) entering a sentencing statement that omits reasons clearly supported by the record, or (4) entering a sentencing statement that includes reasons that are improper as a matter of law.

*Anglemyer v. State*, 868 N.E.2d 482.

Webster's specific claims falls under the third category in that Webster asserts that the trial court overlooked significant mitigating factors. A trial court is not obligated to credit mitigating circumstances the same as the defendant or explain why it has chosen to reject certain factors as mitigating. *Rousch v. State*, 875 N.E.2d 801 (Ind. Ct. App. 2007). To demonstrate an abuse of discretion, the defendant must show the court failed to find a mitigating circumstance that is both significant and clearly supported by the record. *Felder v. State*, 870 N.E.2d 554 (Ind. Ct. App. 2007). A trial court does not abuse its discretion, however, by refusing to find a circumstance mitigating merely because it is offered by the defendant. *Id.*

Webster argues that the fact that she called 911 should have been considered as a significant mitigating circumstance because it ensured that Radford received medical assistance. While it is true that Webster called 911, she apparently did so approximately fifty minutes after the shooting and at no time did she direct officers to the location of the shooting. Moreover, we note that Webster fled the scene of the shooting as others rushed to assist Radford. Clearly, Webster's primary concern was not that Radford get immediate

medical attention. Indeed, Radford had already been transported to Methodist Hospital by the time Webster called 911. The trial court did not abuse its discretion in not finding this circumstance to be significantly mitigating.

Webster also asserts that the trial court should have considered the fact that she turned herself in and cooperated with police as a significant mitigating factor. Webster's cooperation did not, however, significantly aid the police and move the case along more quickly. To be sure, Radford immediately identified Webster as the person who shot her and provided a detailed description of Webster's car. From the information provided by Radford, the police had more than enough information to identify and locate Webster. Moreover, the crucial evidence at Webster's jury trial was Radford's testimony.

We further note that even though Webster gave a statement to Detective Scheid without counsel, she decided to give him truthful information only after she realized the information he already knew did not match the story she was giving. Initially, Webster told Detective Scheid that she fired her gun from inside the vehicle, but admitted that she was in front of the vehicle when Detective Scheid informed her that a shell casing was found outside the car. The trial court did not abuse its discretion in failing to find Webster's cooperation to be a significant mitigating circumstance. *See Corcoran v. State*, 774 N.E.2d 495 (Ind. 2002) (defendant's cooperation with police and subsequent confession appropriately given low mitigating weight because it would not have been difficult for police to determine he was responsible).

Webster also claims that her sentence is inappropriate. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemeyer v. State*, 868 N.E.2d 482. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Moreover, we observe that Webster bears the burden of persuading this court that her sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

As to the nature of the offense, the record reveals that Webster got out of her vehicle and shot Radford, who was unarmed and on a bicycle. Contrary to Webster's claim of self-defense, the record demonstrates that she was the initial aggressor in that she attempted to hit Radford with her car as Radford rode her bicycle down the street. When Radford encountered Webster and Wright at the intersection of Zwingley and Minnesota Streets, Webster and Wright screamed and yelled at her and called her names. Webster got out of her vehicle, walked to the front of her car, and shot a defenseless, unarmed Radford. Webster then fled the scene. Radford suffered significant pain, damage to her muscle tissue, and can no longer have children as a result of the gunshot wound inflicted by Webster.

Turning now to the character of the offender, we note Webster's criminal history. Webster has a juvenile record and prior convictions for carrying a handgun without a license

and felony possession of a controlled substance. Despite rehabilitative measures and leniency in prior matters, Webster continues to demonstrate her unwillingness to conform to the law. We further reject Webster's arguments that her sentence is inappropriate given her health issues and the fact that she has a five-year-old son. Neither of these factors restrained Webster's criminal behavior. Webster was diagnosed with Lupus when she was sixteen years old, and yet, she has received several convictions as an adult. Her son was born in October 2002, and since that time, she has had several arrests, albeit those resulting cases were eventually dismissed. In light of the nature of the offense and the character of the offender, we cannot say that the sentence imposed is inappropriate.

3.

Webster argues that the trial court erred when it ruled that, as a matter of law, she could not receive credit for 202 days she spent on pre-trial GPS monitoring. A defendant is not entitled to sentencing credit for time spent on pre-trial home detention. *Molden v. State*, 750 N.E.2d 448 (Ind. Ct. App. 2001). Nevertheless, granting credit for pre-trial electronic detention is within the trial court's discretion. *See James v. State*, 872 N.E.2d 669 (Ind. Ct. App. 2007); *D.S. v. State*, 829 N.E.2d 1081 (Ind. Ct. App. 2005) (both finding no abuse of discretion in trial court's refusal to give credit for pre-trial time spent on home detention).

At the sentencing hearing, Webster noted for the court that she had served 202 days on pre-trial GPS monitoring. In response, the court erroneously stated that it was "not allowed" to give her credit for pre-trial GPS monitoring. *Transcript* at 212. In fact, deciding whether Webster should receive credit for the days spent on pre-trial GPS monitoring was within the



judge's discretion. The State asserts that the judge's error was harmless in that it did not deny Webster a substantial right and is not inconsistent with substantial justice. *See Marshall v. State*, 832 N.E.2d 615 (Ind. Ct. App. 2005), *trans. denied*. The State further asserts that given the court's reasoning and sentencing statement, it is apparent the court would not have given Webster credit for time spent on pre-trial GPS monitoring even if the court had recognized it was within its discretion to grant such credit. We conclude the best course is to remand this matter to the trial court to determine whether, in its discretion, Webster should receive credit for time spent on pre-trial GPS monitoring.

Judgment affirmed and remanded.

MAY, J., and BRADFORD, J., concur